

BOARD OF APPEALS CASE NO. 4852

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BEFORE THE

APPLICANT: James Wilson

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ZONING HEARING EXAMINER

**REQUEST: Variances for existing pool,
deck, dwelling and shed within required
setbacks; 4025 Timothy Drive, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/14/98 & 10/21/98

HEARING DATE: December 23, 1998

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Record: 10/16/98 & 10/23/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, James Wilson, appeared before the Hearing Examiner requesting a variance to Section 267-36(B), Table VI, of the Harford County Code, for a dwelling with less than the required 35 foot rear yard setback, a variance to Section 267-23(C)(6) for a deck with less than the required 7.5 foot side yard setback, a variance to Section 267-26(D)(3) for a swimming pool with less than the required 10 foot side yard setback, and a variance to Section 267-26(C)(5)(b) for a shed with less than the required 3 foot setback.

The subject parcel is located at 4025 Timothy Drive in the First Election District. The parcel is identified as Parcel No. 747, in Grid 3-D, on Tax Map 62. The parcel contains .21 acres, more or less, and is zoned R3/COS/IDA.

Mr. James Wilson appeared and testified that the subject property is improved by a single-family dwelling with an attached garage, a swimming pool and accessory structures. The witness said that when he purchased the parcel in March 1997, all of the improvements were in place and that he was unaware that any setback violations existed. The Applicant said that he purchased title insurance, had a location survey performed, had obtained a disclosure from the seller, and none of the setback violations were identified in those documents. The witness said he did not feel approval of the variance would be substantially detrimental to adjacent properties or materially impair the purpose of the Code because he has spoken to his neighbors and none of his neighbors expressed concern about the request, nor did they appear at the public hearing to testify.

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Mr. Wilson also explained that denial of the variances would cause practical difficulty because he would be required to remove portions of the buildings and relocate the swimming pool. The witness introduced proposals to make the modifications if the variances are denied. Without objection, the Applicant also introduced Petitioner's Exhibit No. 10, which was an inspection and appraisal done by Aimee O'Neill wherein Ms. O'Neill indicates "...the improvements which are the subject of the property owner's appeal to the Department of Planning and Zoning are consistent with the neighborhood, enhance the value of the subject property, have no negative impact on the value of the adjoining property and are of good quality construction and well maintained".

Mr. Anthony McClune, Chief of Current Planning for the Department of Planning and Zoning, appeared and testified that it was his opinion that the subject parcel is unique because it is a corner lot and that the configuration of the lot itself was unique. Mr. McClune explained that both of these conditions limit the usable area on the lot. Mr. McClune went on to testify that none of the violations were the result of action taken by Mr. Wilson, but were caused by Mr. Wilson's predecessor in title.

CONCLUSION:

The Applicant is requesting the following relief:

1. a variance to Section 267-36(B), Table VI, which requires a rear yard setback of 35 feet. The Applicant is proposing a setback of 14 feet.
2. a variance to Section 267-23(C)(6) for a deck. The Code requires a 7.5 foot side yard setback and the Applicant is proposing no setback.
3. a variance to Section 267-26(D)(3) which requires an existing swimming pool to be 10 feet from the property line. The Applicant is proposing a 2 foot setback.
4. a variance to Section 267-26(C)(5)(b) which requires a setback for an existing shed to be 3 feet from the property line. The Applicant is proposing a 2 foot setback.

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Section 267-23(C)(1)(a)(6) provides:

The Applicant is requesting a variance to Section 267-26(C)(1), which states:

Exceptions and modifications to minimum yard requirements.

Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Enclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

Section 267-26(D)(3) provides:

Recreation facilities, such as swimming pools and tennis courts, if the facilities are used by the occupants or guests of the principal use and no admission or membership fees are charged, provided that the edge of the facility, not including security fences, shall be located not less than ten (10) feet from any side or rear lot line. For community pools and tennis courts, the edge of the facility shall be located not less than fifty (50) feet from any residential unit or side and rear lot line.

Section 267-26(C)(5)(b) provides:

Residential detached accessory structure: six (6) feet from any principal structure and three (3) feet from side or rear yard lot lines except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.

The uncontradicted testimony of the Applicant was that when he purchased the property in March 1997, all of the zoning violations were in existence. He introduced numerous documents, including a location survey, a disclosure from his predecessor in title, and title insurance, none of which alerted him to the existence of the violations. The Applicant also introduced proposals setting forth the cost of correcting the violations, as well as an appraisal that the improvements on the property are consistent with the neighborhood, enhance the value of the property, do not have a negative impact on the value of adjacent properties, are of good quality construction and well maintained.

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Mr. Anthony McClune, Chief of Current Planning for the Department of Planning and Zoning, corroborated the Applicant's testimony and indicated he felt the subject property was unique because it is a corner lot and because of the configuration of the parcel itself.

It is the finding of the Hearing Examiner that the subject parcel is unique for the reasons set forth by the Applicant and Mr. McClune in their testimony. It is, further, the finding of the Hearing Examiner that none of the violations are the result of actions taken by the Applicant and that denial of the variance would cause an unnecessary hardship on the Applicant, who would be required to either remove the violations or substantially modify the improvements on the parcel.

It is, further, the finding of the Hearing Examiner that approval of the variances will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code because no protestants appeared and testified that they felt the Applicant's request would impact their property.

Therefore, it is the recommendation of the Hearing Examiner that requested variances be approved, subject to the following conditions:

- 1. The Applicant obtain all necessary permits and inspections for the improvements.**
- 2. The garage shall not be used for the storage of contractors equipment and/or commercial vehicles.**
- 3. The garage shall not be used in the furtherance of a business.**
- 4. All requirements of the Chesapeake Bay Critical Area regulations shall be met.**

Date JANUARY 6, 1999

**L. A. Hinderhofer
Zoning Hearing Examiner**